IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

WP(C).No. 2011 of 2007(M)

PETITIONER:

ABDUL QUAYYUM, S/O.IBRAHIM HAJI (LATE),
MADATHIL HOUSE, P.O.ELATHUR, KOZHIKODE
DISTRICT.

BY ADV. SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

RESPONDENTS:
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1. THE KOZHIKODE CORPORATION,
REPRESENTED BY ITS SECRETARY, CORPORATION
OFFICE, BEACH ROAD, CALICUT.

2. THE KOZHIKODE CORPORATION COUNSIL,
REPRESENTED BY ITS SECRETARY, CORPORATION
OFFICE, BEACH ROAD, CALICUT.

3. TOWN PLANNING STANDING COMMITTEE,
REPRESENTED BY ITS CHAIRMAN,
CORPORATION OF CALICUT.

BY ADV. SRI.P.V.KUNHIKRISHNAN,SC,KOZHIKODE CORP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P.(C)NO. 2011 of 2007

Dated this 25th day of January, 2007

JUDGMENT

The application for building permit submitted by the petitioner was rejected by the Corporation as per Ext.P6 on three reasons. The first reason mentioned in Ext.P6 is that there was a proposal to establish a taxi stand on properties including the property in respect of which permission has been applied for by the petitioner and that even though the Town Planning Committee has on 20.7.2005 ordered (vide Ext.P2 resolution) to exclude the property from the proposal, a decision to that effect has not been taken by the Corporation Council. This writ petition is filed by the petitioner impugning Ext.P6 prominently on the ground that first reason mentioned in Ext.P6 is not sustainable because of the principles laid down by this court in **Padmini v. State of Kerala (1999 (3) KLT 465)** .

2. Sri.P.V.Kunhikrishnan, the learned Standing Counsel for the Corporation took notice and sought time for getting

instructions. The Standing Counsel submitted that he is yet to receive instructions from the Corporation. According to him reason Nos. 2 and 3 mentioned in Ext.P6 are valid and as regards reason No. 1 also an undertaking should be submitted by the petitioner to the effect that in the event of the property becoming necessary for establishment of taxi stand or any other public purpose, the petitioner will be prepared to demolish the construction without raising objections.

3. Having regard to the principles laid down in Padmini's case(supra) and the circumstance that as early as on 20.7.2005, the permanent committee of the Corporation for Town Planning resolved that the property in question is not suitable for the establishment of a taxi stand and that the way which leads to the proposed taxi stand is a narrow one hence decided to exclude the property I am of the view that at this distance of time, the Corporation is not justified in adhering to the technical reason that a former resolution to that effect has not been passed by the Council. Reason Nos. 2 and 3 mentioned in Ext. P6 are defects which are to be cured by the petitioner. The petitioner's claim as per Ext.P7 is that after curing those two defects the

plan has been resubmitted . Under these circumstances, this writ petition will stand disposed of with the following directions:

The petitioner will furnish an undertaking in the form of an affidavit before the Secretary of the first respondent Corporation stating very clearly that in the event of the land becoming necessary for any public purpose, he will demolish the constructions without raising objections. If the Corporation receives such an affidavit and is convinced that as per the revised plan, the defects noted as item Nos 2 and 3 in Ext.P6 have been actually rectified by the petitioner,the Corporation will grant approval to the revised plan and issue permit. The petitioner and the respondents will ensure compliance with the above direction within three weeks of receiving a copy of this judgment.

PIUS C.KURIAKOSE
Judge

dpk